

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-184551

DATE:

NOV 14 1975

MATTER OF:

Syracuse Rigging Company, Inc.

DIGEST:

Contractor's additional charge for waiting time, arising from subcontractor's increased costs for delay in unloading shipment, is not allowable without compensatory benefit to the Government.

Mr. Jon D. Freshour, Collections Manager for the National Museum of History and Technology, Smithsonian Institution (Smithsonian), by letter of June 26, 1975, has requested an advance decision as to the propriety of paying accessorial charges of \$300 to Syracuse Rigging Company, Inc. (Syracuse), for "waiting time" incident to a contract for hauling one locomotive engine from Rail City, New York, to Silver Hill, Maryland.

Mr. Freshour has advised our Office that he is an authorized certifying officer; as such, he is entitled to an advance decision by the Comptroller General on a question of law as to whether the additional charges should be paid. 31 U.S.C. 82d (1970). In compliance with our request, and as required by our procedures, Mr. Freshour has submitted to our Office the original bill and vouchers presented for certification. 52 Comp. Gen. 83 (1972).

Smithsonian entered into a contract with Syracuse to provide "Labor, material and equipment necessary to transport one steam engine locomotive from Rail City, New York, to Silver Hill, Maryland" for \$4,166. The contract negotiations were oral and there is no record of a formal written contract. However, there is no dispute as to the language and terms of the contract as evidenced by comparing Smithsonian's letter of June 26, 1975, and Syracuse's Estimate-Contract Data Sheet which is contained in the file. The data sheet indicates that the contract was in fact awarded to Syracuse. The shipment took place on April 17, 1975. By invoice No. 26222, dated April 30, 1975, Syracuse billed Smithsonian for the contract price of \$4,166. By invoice No. 26223, also dated April 30, 1975, Syracuse billed Smithsonian for the additional \$300 charge for waiting time.

The record furnished us is unclear. However, Syracuse has informally advised us of the particulars of the shipment and the circumstances giving rise to the additional charges. Syracuse apparently does no hauling itself, and it subcontracted that task to its sister corporation, Lakelawn Transportation (Lakelawn). Lakelawn's operating rights precluded it from carrying the engine beyond the Pennsylvania border, so it subcontracted the hauling from Pennsylvania to Maryland to another carrier, Pittsburgh and New England Trucking Company (Pittsburgh). When the shipment arrived at Silver Hill, Maryland, Trojan, Inc., under separate contract, unloaded the engine and placed it in the Smithsonian warehouse at Silver Hill. The waiting time took place in Maryland, and was allegedly caused by a 12-hour unloading operation by Trojan. Pittsburgh charged Lakelawn \$300 for the waiting time, and Lakelawn billed Syracuse in turn. Now Syracuse is attempting to collect the additional charge from the Government.

Syracuse was within its rights to subcontract its duties to the Government. However, in so doing the contractor must retain personal responsibility and power to perform the duty under the contract. Chemicals Recovery Co. v. United States, 103 F. Supp. 1012, 1018 (Ct. Cl. 1952); McPhail v. United States, 181 F. Supp. 251, 254 (Ct. Cl. 1960).

The Government's contract with Syracuse was for all "Labor, equipment and material" necessary to transport the engine. There were no provisions as to time restrictions or hourly rates of pay. The contract was lump-sum in nature. If there was a 12-hour delay in unloading the engine, and we note that the file contains no corroboration for that assertion, that was a risk that Syracuse took when it submitted its bid for the job. Smithsonian points out, and correctly so, that the contract was for all charges for the transporting of the engine. It is clear that increased cost, whether foreseen or not foreseen, is a contract hazard that neither excuses non-performance nor entitles the contractor to additional compensation without compensatory benefit to the Government. 45 Comp. Gen. 224, 227 (1965); 37 Comp. Gen. 642, 645 (1958). If Pittsburgh incurred additional costs, which were ultimately passed on to Syracuse, that is not the concern of the Government. Whatever arrangement Syracuse made with the subcontractors is immaterial to the Government's contract with Syracuse. Accordingly, its invoice No. 26223 for \$300 cannot be certified for payment and will be retained here.

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The file also contains two original unpaid bills by Pittsburgh claiming from Smithsonian total transportation charges of \$1,628.01. The bills, both stated on Public Voucher For Transportation Charges, SF 1113, are supported by Government bill of lading (GBL) No. K-0749461 bearing the name of P. & N.E. (Pittsburgh) as carrier and Lakelawn as shipper. This GBL should not have been issued by the Transportation Specialist of the Smithsonian shipping office. The Government's contract was with Syracuse, not Pittsburgh. Syracuse has verified that this billing was improper, and has assured us that Lakelawn is responsible for paying Pittsburgh its charges. Pittsburgh's unpaid original bills, which cannot be certified for payment, and the GBL will be retained here.

Accordingly, Syracuse's invoice No. 26222 for the contract price of \$4,166 may be certified for payment, if otherwise correct.

Controls should be set up to assure that Smithsonian does not allow any payments to either Pittsburgh or Lakelawn under the contract with Syracuse.

MILTON SOCOLAR

Acting Comptroller General
of the United States